

1 THE HONORABLE THOMAS S. ZILLY
2
3

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX - REAL ESTATE EXCHANGE,
INC.,

Plaintiff,

v.

ZILLOW, INC., et al.

Defendants.

Case No. 2:21-cv-00312-TSZ

**JOINT MOTION FOR RELIEF FROM
DEADLINES**

NOTE ON MOTION CALENDAR:
September 22, 2022

Plaintiff REX - Real Estate Exchange, Inc. ("REX"), Defendants Zillow Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC (collectively, "Zillow"), and Defendant National Association of REALTORS® ("NAR"), by and through their attorneys, respectfully ask this Court to extend the remaining deadlines in this case.

The Parties originally submitted a discovery plan and proposed schedule June 1, 2021. Dkt. # 79. The Court issued the initial schedule on June 9, 2021. Dkt. # 81. Defendants each filed motions to dismiss. Dkt. ## 83, 84, 90, 92, 93. After the Court's September 2, 2021 Order on the motions (Dkt. # 98), REX filed an Amended Complaint on September 30, 2021 that included new causes of action against each Defendant. Dkt. # 99. Zillow answered that Complaint on October 14, 2021. Dkt. # 100. NAR filed an additional motion to dismiss, which, after briefing, was granted in part and denied in part on December 20, 2021. *See* Dkt. ## 101, 102, 103, and 108.

During and after the pendency of the motions to dismiss, the Parties issued discovery requests, and each Party subsequently answered them. The Parties also worked cooperatively to resolve issues regarding an ESI Order and submitted that to this Court in January 2022. Dkt. # 112. In December 2021, REX also issued subpoenas to about 50 third parties, most of which are Multiple Listing Services. The parties have since issued additional discovery requests to one another, as well as third party subpoenas.

1
2 Additionally, on January 27, 2022, NAR filed an Answer to REX's Amended
3 Complaint that for the first time asserted a Lanham Act claim against REX. Dkt. # 114. REX
4 filed a motion to dismiss that counterclaim on February 17, 2022. Dkt. # 115. NAR filed an
5 opposition to REX's motion to dismiss on March 7, 2022. Dkt. # 117. REX filed its reply on
6 March 11, 2022. Dkt. # 119. On April 22, 2022, this Court dismissed the counterclaim. Dkt.
7 # 124.

8 On March 14, 2022, the Parties submitted competing proposals to revise the schedule,
9 and on March 17, 2022 the Court issued a new schedule. Dkt. # 121. On August 12, 2022, the
10 Parties filed a stipulated motion, asking the Court to extend deadlines for expert testimony but
11 leaving all other deadlines in the case intact. Dkt. # 142. The Court granted the Parties'
12 stipulated motion on August 15, 2022, formalizing that disclosure of expert testimony under
13 Federal Rule of Civil Procedure 26(a)(2) is due by October 19, 2022, and rebuttal expert
14 testimony under Rule 26(a)(2)(D)(ii) is due by December 2, 2022. *See* Paperless Order
15 Granting Stipulated Motion Dkt. # 142 (Aug. 15, 2022).

16 Since then, the Parties have briefed several discovery motions and have been
17 working on assorted discovery issues, including productions. Document productions
18 remain in their early phases, as search term negotiations are ongoing but not yet complete.
19 The Parties do not expect to complete search term negotiations with sufficient time for
20 them to review, produce, and analyze all relevant documents before the October 19
21 deadline for initial expert reports. Regarding data, productions are ongoing. The Parties
22 do not expect data productions to be completed such that their respective experts will be
23 able to analyze the important – and voluminous – information before initial reports are due
24 on October 19. Thus, the current schedule does not leave sufficient time for experts to
25 analyze this important and voluminous data before initial reports are due on October 19.

26 Accordingly, the Parties have met and conferred and jointly propose the following
27 amended schedule for the Court's consideration, to give their experts time to analyze
28 relevant data and documents, and to give the Parties and counsel time to pursue needed

1 discovery. The proposed schedule pushes most deadlines back about six weeks while
 2 largely keeping the interval between deadlines the same or similar to the interval in the
 3 current schedule. The Parties have extended somewhat the deadlines for rebuttal reports,
 4 summary judgment oppositions and replies, and Daubert oppositions and replies, instead of
 5 relying in the default sequencing in the federal rules.

	Current Schedule	Parties' Joint Proposal
6 Disclosure of expert testimony 7 under FRCP 26(a)(2)	October 19, 2022	December 5, 2022
8 Disclosure of rebuttal expert 9 testimony under FRCP 10 26(a)(2)(D)(ii)	December 2, 2022	January 18, 2023
11 Discovery Motions due by	November 17, 2022	January 6, 2023
12 Discovery completed by	December 27, 2022	February 3, 2023
13 Dispositive Motions due by	January 26, 2023	March 2, 2023
14 Daubert Motions due by	February 2, 2023	March 9, 2023
15 Oppositions to Dispositive 16 Motions due by	<i>February 13, 2023*</i>	March 23, 2023
17 Oppositions to <i>Daubert</i> 18 Motions due by	<i>February 13, 2023*</i>	March 30, 2023
19 Reply ISO Dispositive 20 Motions due by	<i>February 17, 2023*</i>	April 21, 2023
21 Reply ISO <i>Daubert</i> Motions 22 due by	<i>February 17, 2023*</i>	April 21, 2023
Motions in Limine due by	March 16, 2023	May 4, 2023
Pretrial Order due by	March 31, 2023	May 19, 2023
Trial Briefs to be submitted by	March 31, 2023	May 19, 2023
Proposed Voir Dire/Jury Instructions due by	March 31, 2023	May 19, 2023
Pretrial Conference	April 7, 2023 @ 10:00AM	May 26, 2023
Jury Trial	April 17, 2023 @ 9:00AM	June 5, 2023

23 * Dates set by default under federal rules.

24 The Parties believe that the proposed schedule will provide the Parties' experts with time
 25 they need to analyze relevant data and documents, allow the Parties' counsel to conduct
 26 additional necessary discovery, and help the Parties prepare this matter for trial.

1 DATED: September 22, 2022

2 BOIES SCHILLER FLEXNER LLP

3 Ursula Ungaro, Esq.

4 Stephen N. Zack, Esq.

5 BOIES SCHILLER FLEXNER LLP

6 100 SE 2nd Street, Suite 2800

7 Miami, FL 33131

8 BOIES, SCHILLER & FLEXNER LLP

9 Telephone: (305) 539-8400

10 Facsimile: (305) 539-1307

11 Email: uungaro@bsflp.com

12 szack@bsflp.com

13 By:/s/ Carl E. Goldfarb

14 Carl E. Goldfarb (*Admitted Pro Hac Vice*)

15 401 East Las Olas Blvd., Suite 1200

16 Fort Lauderdale, FL 33301

17 Telephone: (954) 356-0011

18 Facsimile: (954) 356-0022

19 Email: cgoldfarb@bsflp.com

20 David Boies, Esq.

21 BOIES SCHILLER FLEXNER LLP

22 333 Main Street

23 Armonk, NY 10504

24 Telephone: (914) 749-8200

25 Facsimile: (914) 749-8300

26 Email: dboies@bsflp.com

27 **Attorneys for Plaintiff REX – Real Estate
28 Exchange, Inc.**

29 McCARTY LAW PLLC

30 Darren L. McCarty (*Admitted Pro Hac Vice*)

31 Cristina M. Moreno (*Admitted Pro Hac*

32 *Vice*) 1410B West 51st Street

33 Austin, TX 78756

34 Telephone: 512-827-2902

35 Email: darren@mccartylawllc.com

36 **Attorneys for Plaintiff REX-Real Estate
37 Exchange, Inc.**

38 ORRICK, HERRINGTON & SUTCLIFFE
39 LLP

40 Aravind Swaminathan (WSBA No. #33883)

41 Nicole Tadano (WSBA No. 40531)

42 701 Fifth Avenue, Suite 5600

43 Seattle, WA 98104

44 Telephone: 206-839-4300

45 Facsimile: 206-839-4301

46 Email: aswaminathan@orrick.com

47 ntadano@orrick.com

48 By:/s/ John “Jay” Jurata, Jr.

49 John “Jay” Jurata, Jr.

50 (*Admitted Pro Hac Vice*)

51 1152 15th Street, N.W.

52 Washington, DC 20005

53 Telephone: 202-339-8400

54 Email: jjurata@orrick.com

55 Russell P. Cohen

56 (*Admitted Pro Hac Vice*)

57 405 Howard Street

58 San Francisco, CA 94105

59 Telephone: 415-773-5700

60 Email: rcohen@orrick.com

61 Naomi J. Scotten

62 (*Admitted Pro Hac Vice*)

63 51 West 52nd Street

64 New York, NY 20005

65 Telephone: 212-506-5000

66 Email: nscotten@orrick.com

67 Laura B. Najemy

68 (*Admitted Pro Hac Vice*)

69 lnajemy@orrick.com

70 222 Berkeley Street, Suite 2000

71 Boston, MA 02116

72 Telephone: 617-880-1800

73 **Attorneys for Defendants Zillow, Inc.,
74 Zillow Group, Inc., Zillow Homes, Inc.,
75 Zillow Listing Services, and Trulia, LLC**

76 **Pursuant to this Court’s Electronic Filing
77 Procedure III L, the electronic signatory has
78 obtained approval from all other signatories.

1 COOLEY LLP
2
3
4
5

6 Christopher B. Durbin (WSBA No. 41159)
7 1700 Seventh Avenue
8 Suite 1900
9 Seattle, WA 98101-1355
10 Phone: (206) 452-8700
11 Fax: (206) 452-8800
12 Email: cdurbin@cooley.com

13 By:/s/ Ethan Glass
14 Ethan Glass (*pro hac vice*)
15 COOLEY LLP
16 1299 Pennsylvania Avenue, NW
17 Suite 700
18 Washington, DC 20004-2400
19 Phone: (202) 776-2244
20 Fax: (202) 842-7899
21 eglass@cooley.com

22 Thomas C. Rubin, WSBA #33829
23 QUINN EMANUEL URQUHART &
24 SULLIVAN, LLP
25 1109 First Avenue, Suite 210
26 Seattle, WA 98101
27 Phone: (206) 905-7000
28 Fax: (206) 905-7100
tomrubin@quinnmanuel.com

29 Michael D. Bonanno (*pro hac vice*)
30 Kathleen Lanigan (*pro hac vice*)
31 Peter Benson (*pro hac vice*)
32 QUINN EMANUEL URQUHART &
33 SULLIVAN, LLP
34 1300 I Street, Suite 900
35 Washington, D.C. 20005
36 Phone: (202)538-8000
37 Fax: (202) 538-8100
38 ethanglass@quinnmanuel.com
39 mikebonanno@quinnmanuel.com
40 katlanigan@quinnmanuel.com
41 peterbenson@quinnmanuel.com

42 *Attorneys for The National Association of
43 Realtors®*